

No.

465

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~~4456~~ United States 1450  
**Circuit Court of Appeals**

For the Ninth Circuit.

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JOHN G. MORAN,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error,

JOSEPH BRUNO and W. E. SMITH,

Defendants.

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**Transcript of Record.**

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Upon Writ of Error to the United States District  
Court, for the Southern District of Cal-  
ifornia, Southern Division.

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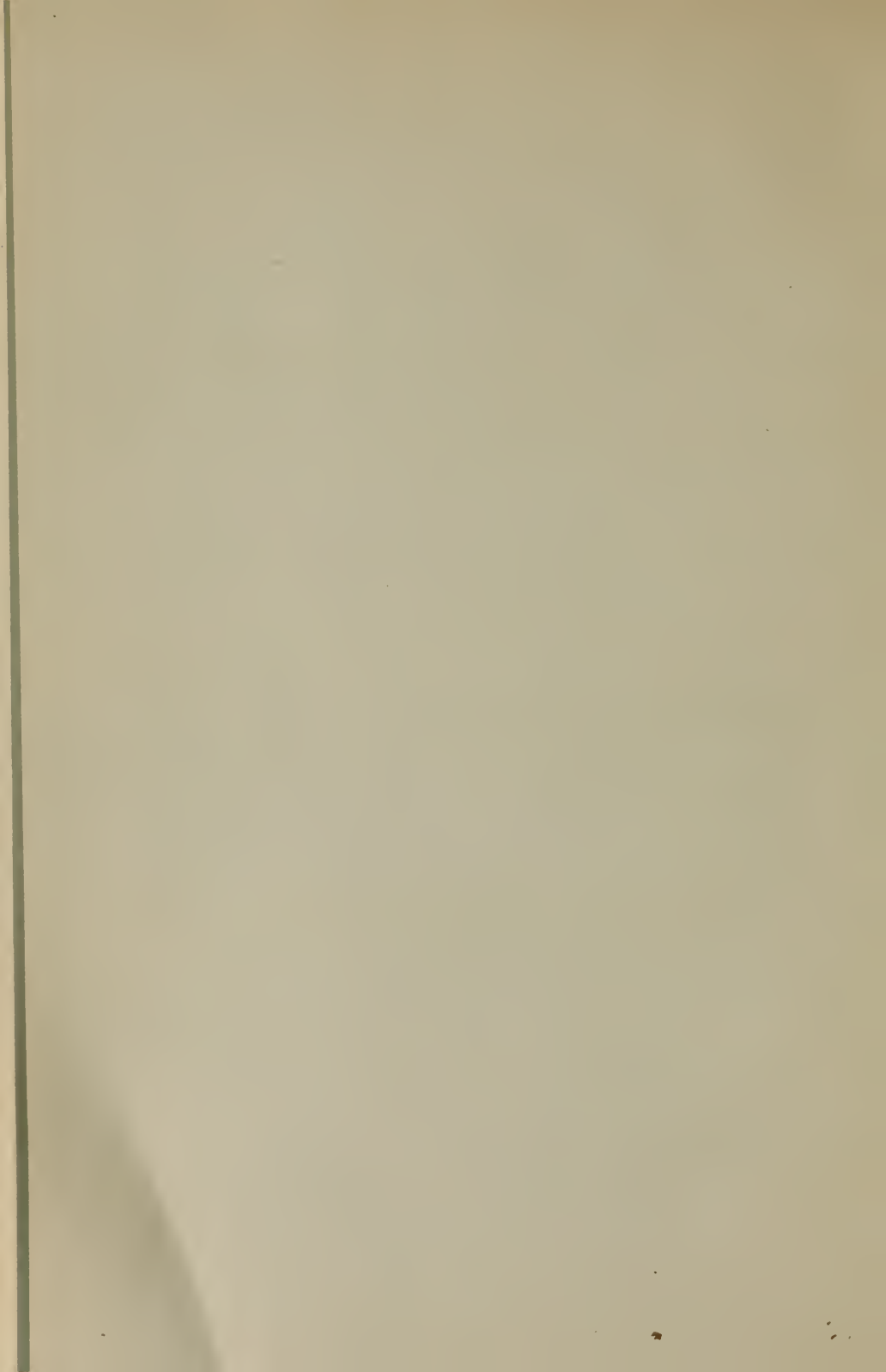
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JUL 2 - 1925

E. O. MORGENTHAU







No.

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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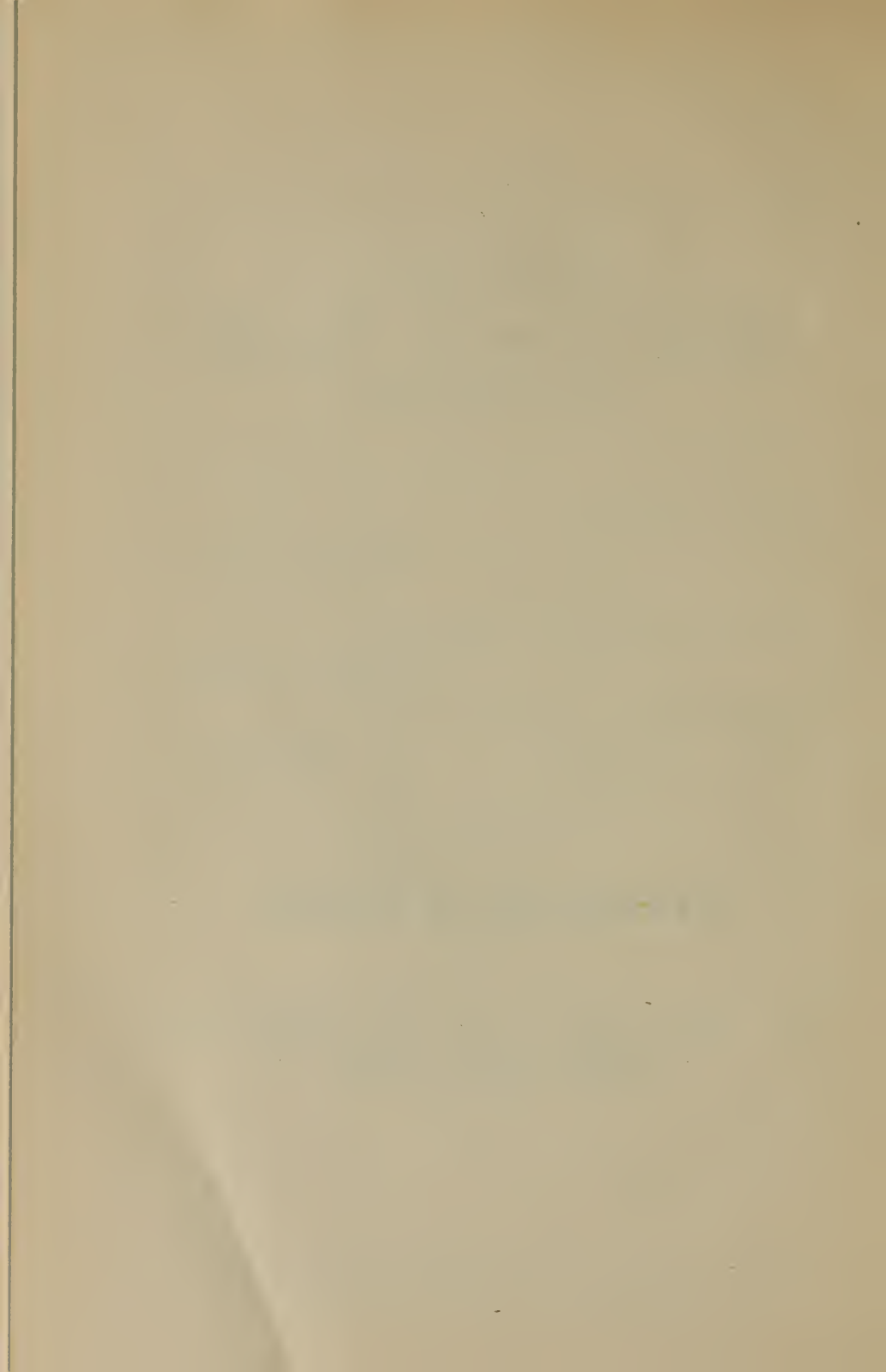
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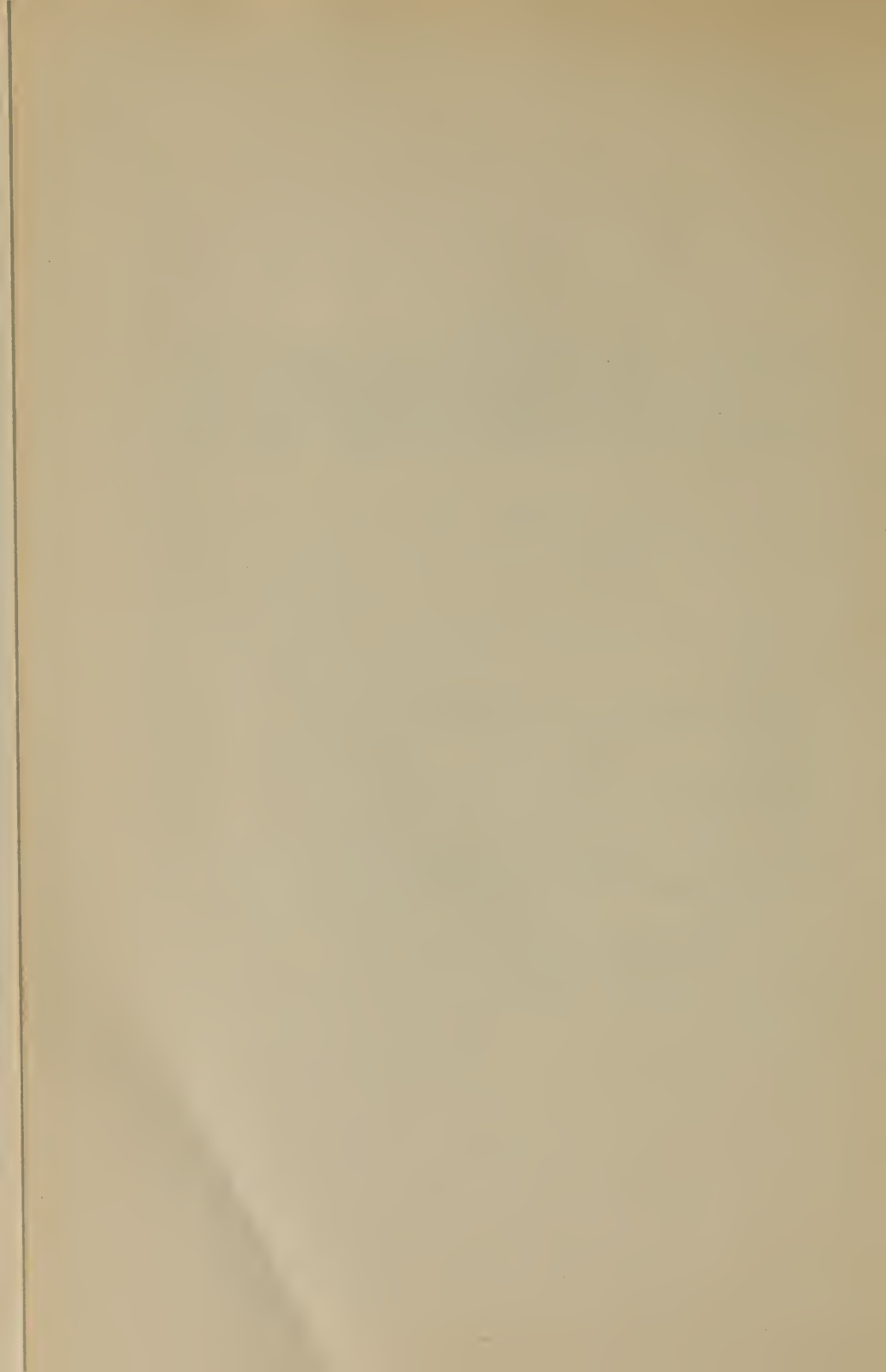
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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### Names and Addresses of Attorneys.

For Plaintiff in Error:

FRED H. THOMPSON, Esq., Pacific Finance  
Building, Los Angeles, California.

For Defendant in Error:

SAMUEL McNABB, Esq., United States At-  
torney; J. EDWIN SIMPSON, Assistant  
United States Attorney, Federal Building,  
Los Angeles, California.

United States of America, ss.

To The United States of America Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 9th day of July, A. D. 1925, pursuant to a Writ of Error in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action wherein the United States of America is Plaintiff vs Joseph Bruno, John G. Moran and et al are defendants and you are to show cause, if any there be, why the judgment made, rendered and entered *in* the 7th day of March 1925 in the said action mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Paul J. McCormick United States District Judge for the Southern District of California, this 9th day of June, A. D. 1925, and of the Independence of the United States, the one hundred and forty-*nine*

Paul J. McCormick

U. S. District Judge for the Southern  
District of California.

[Endorsed]: FILED JUN 9 1925 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk. Received copy of the within Citation this 9th day of June 1925 J. Edwin Simpson Asst U S Atty.

United States of America, ss.

The President of the United States of America,  
To the Judges of the District Court of the United  
States, for the Southern District of California,  
GREETING:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said District Court, before you between The United States of America, Plaintiff, vs. Joseph Bruno, John G. Moran and et al, Defendants a manifest error hath happened, to the great damage of the said John G. Moran as by his complaint appears, and it being fit, that the error, if anv there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal; distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, on the 9th day of July next, in the said United States Circuit Court of Appeals, to be there and then held, that the record and proceedings aforesaid be inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

WITNESS, the HON. William H. Taft, Chief Justice of the United States, this 9th day of June in the year of our Lord one thousand nine hundred and twenty-five and of the Independence of the United States the one hundred and forty-ninth.

(SEAL)

Chas. N. Williams

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By R S Zimmerman

Deputy Clerk.

The above writ of error is hereby allowed.

McCormick

Judge.

I hereby certify that a copy of the within Writ of Error was on the 9th day of June, 1925, lodged in the office of the Clerk of the said United States District Court, for the Southern District of California, Southern Division, for said Defendants in Error.

Chas. N. Williams

Clerk of the District Court of the United States for the Southern District of California.

By R S Zimmerman

Deputy Clerk.

[Endorsed]: Filed June 9-1925 Chas N Williams,  
Clerk R S Zimmerman Deputy

(TITLE OF COURT AND CAUSE)

### COMPLAINT

THE UNITED STATES OF AMERICA through its attorneys Joseph C. Burke, United States Attorney

for the Southern District of California, and J. E. Simpson, Assistant United States Attorney for the said District, complains of the defendants and for cause of action alleges:

I.

That on or about the 5th day of July, 1923, in the City of Los Angeles, State of California, under an order and warrant of arrest duly made and issued by Stephen G. Long, the United States Commissioner, in the City of Los Angeles, State of California, one Joseph Bruno was arrested by the Marshal for the Southern District of California, on a charge of mailing narcotics in the United States Mail;

II.

That under and by virtue of an affidavit of complaint filed in said Court charging the said defendant Joseph Bruno for commission of the aforesaid offense, to-wit: a violation of Section 217 of the Federal Penal Code, the defendant Joseph Bruno was brought before Stephen G. Long, the aforesaid United States Commissioner, and was duly admitted to bail in the sum of TEN THOUSAND DOLLARS (\$10,000), pending examination on the said charge;

III.

That on the 6th day of July, 1923, these defendants and each of them, Joseph Bruno, John G. Moran and W. E. Smith undertook in the sum of TEN THOUSAND DOLLARS (\$10,000) that the said Joseph Bruno should, if released from the custody of the said Marshal, appear and answer said charge or any matter or thing that may be objected against him wherever

and whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and processes of the said Court during the pendency of said action, and render himself in execution of such judgment as might be issued and entered against him, a copy of which undertaking or bail bond is hereto annexed marked Exhibit "A", and the whole thereof is made a part hereof the same as if the same were specifically set forth herein;

IV.

That thereupon and in consideration of the said undertaking executed by these defendants, the said Joseph Bruno was released from custody of the United States Marshal and into the custody of the defendants John G. Moran and W. E. Smith;

V.

That thereafter and after proceedings had and upon notice to these defendants John G. Moran and W. E. Smith, the said cause was set down for hearing on the 13th day of November, 1923, that on the said date the said Joseph Bruno, defendant in said action, failed to appear before the said Commissioner and the sureties on said bail bond, John G. Moran and W. E. Smith, were called to produce the said Joseph Bruno but they failed to produce him; whereupon the said Commissioner declared said bond to be forfeited.

VI.

That by reason of the matters herein before set forth the condition of the said bond to appear, attached hereto and marked Exhibit "A", has been broken and

the said defendants and each of them are indebted to this plaintiff in the sum of TEN THOUSAND DOLLARS (\$10,000);

VII.

That the said sum has not nor has any part thereof been paid and the whole thereof is now due, owing and unpaid to this plaintiff.

WHEREFORE, plaintiff prays judgement against these defendants and each of them.

(1) For judgment in the sum of TEN THOUSAND DOLLARS (\$10,000) with interest thereon from the 13th day of November, 1923, until paid.

(2) For its costs of suit incurred herein.

(3) For a Writ of Attachment directing the Marshal for the Southern District of California to attach any and all property of the defendants found within this District.

(4) For such other and further relief as to this Court may seem just and proper in the premises.

JOSEPH C. BURKE,

United States Attorney,

J. E. Simpson

J. E. Simpson,

Assistant United States Attorney.

United States of America

Exhibit "A"

Southern District of California, ss.

KNOW ALL MEN BY THESE PRESENTS:

That we Joseph Bruno as principal, and John G. Moran and W. E. Smith as sureties, are held and

firmly bound unto the United States of America, in the sum of Ten Thousand Dollars, to the payment of which, well and truly to be made, we jointly and severally bind ourselves, our executors and administrators, firmly by these presents. Witness our hands and seals at Los Angeles, in said District, this 6th day of July A. D. 1923

The conditions of the above obligation is such that, whereas, an affidavit of complaint on oath hath been duly made to Stephen G. Long a United States Commissioner for said District, charging Joseph Bruno with the crime of violation of Section 217 Federal Penal Code committed on or about the 27th day of June 1923, to-wit: in the Los Angeles Calif District aforesaid, and, whereas, the said Joseph Bruno has been arrested by virtue of a warrant duly issued on said affidavit of complaint, and pending examination has been duly admitted to bail in the sum of Ten Thousand Dollars

NOW, THEREFORE, if the said Joseph Bruno shall appear and answer said charge or any matter or thing that may be objected against him wherever and whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and if convicted, shall appear for judgment and render himself in execution thereof, then shall this *recognizance* be void, otherwise to remain in full effect and virtue.

(Defendant) Joseph Bruno [SEAL]

Street 316 Clay St

City Los Angeles

(Surety) John G. Moran

(Surety) W. E. Smith [SEAL]



Southern District of California, ss.

John G. Moran and W. E. Smith being duly sworn, each for himself deposes and says, that he is a householder in said District, and is worth the sum of Ten Thousand Dollars, exclusive of property exempt from execution, and over and above all debts and liabilities, and that he is the owner of the property mentioned in his schedule of assets hereunder.

(A) John G. Moran

Address 743 Beacon Ave. City

(B) W. E. Smith

Address 1126 W 7th St. City

Subscribed and sworn to before me this 6th *July* day of July 1923

Stephen G. Long

United States Commissioner, for the Southern District of California.

Schedule of Assets of Surety

Schedule "A"

s. 1/2 and N. E. 4 of Sect 16= Township 30-So. Range - 3 East. M-D-M= 480 acres, San Louis Obispo Co. Calif value 24,000.00 clear

Schedule of Assets of Surety

Schedule "B"

East 80 acres Tract 85, township 14 South Range 15 East. S-B-M Co of Imperial Calif Value \$16,000.00 clear.

Examined and recommended for approval as provided in Rule 29.

A. E. T. Chapman

Attorney

FILED NOV 22 1923 CHAS. N. WILLIAMS,  
Clerk G. F. Gibson, Deputy

(Endorsed): 5993 Cr No. 3807 U. S. District  
Court SOUTHERN DISTRICT OF CALIFORNIA,  
Before United States Commissioner The United States  
of America vs. Joseph Bruno Bond to Appear I  
hereby approve the form of the within bond and the  
sufficiency of the securities thereon. Stephen G. Long  
Filed this 6 day of Jul A. D. 1923 Stephen G. Long  
United States Commissioner

[Endorsed]: FILED APR 1 1924 CHAS. N.  
WILLIAMS, Clerk By R S Zimmerman Deputy  
Clerk.

(TITLE OF COURT AND CAUSE)

#### Demurrer

Comes now the defendant, John G. Moran, appear-  
ing for himself and not for his co-defendants, demurrs  
to the Complaint on file herein on the grounds:

#### I

That the Complaint does not state facts sufficient  
to constitute a Cause of Action.

#### II

That the Complaint does not state facts sufficient to  
constitute a Cause of Action for the reason that the  
bond upon which the action is predicated is not in  
manner and form as required by law, and is without  
legal efficacy.

III

The Complaint is ambiguous, uncertain and unintelligible for the reason that it cannot be ascertained from either the Complaint or the bond for what offense, if any, the bond is given.

IV

The Complaint is ambiguous and uncertain for the reason that it does not appear from said Complaint that the defendant was *arranged* in a Court on any criminal charge.

V

The Complaint is ambiguous and uncertain for the reason that it cannot be ascertained therefrom when the defendant was *arranged* on a criminal charge or how or when he had notice that case was set down for hearing on the 13th day of November, 1923.

VI

The Complaint is ambiguous and uncertain for the reason that it does not appear from said Complaint that the defendant was notified of the date that the case was set down for hearing.

VII

The Complaint is ambiguous and uncertain in this that it cannot be ascertained from said Complaint when the bail bond was declared forfeited or who declared it forfeited.

VIII

The Complaint is ambiguous and uncertain in this that it cannot be ascertained from said Complaint when the case against the defendant was called for hearing on the 13th day of November, 1923.

## IX

The Complaint is ambiguous and uncertain in this that it cannot be ascertained from said Complaint or bond, the place or Court where the defendant was to appear to answer the accusation.

## X

The Complaint is ambiguous and uncertain and the bond is invalid for the reason it does not specify a time for the defendant to appear.

## XI

The Complaint is ambiguous and uncertain for the reason that it cannot be ascertained from the said Complaint or bond, what part or portion of Section 217 of the Federal Criminal *Court* the defendant was accused of violating.

## XII

The Complaint is ambiguous and uncertain for the reason that it does not appear from said Complaint that the bail bond was on file in any Court or that it was a public document when the bail bond was declared forfeited.

## XIII

The Complaint is ambiguous and uncertain in this that it cannot be ascertained from said Complaint whether or not the charge against the defendant was called for hearing on the 13th day of November, 1923.

## XIV

The Complaint is ambiguous and uncertain in this that it cannot be ascertained from said Complaint or bond, the place where the defendant was to appear and answer to the accusation.

XV

The Complaint is ambiguous and uncertain for the reason the bond does not specify a time for the defendant to appear.

WHEREFORE: defendant John G. Moran prays that his demurrer be sustained.

Fred H. Thompson

Attorney for defendant John G. Moran.

[Endorsed]: Received copy of the within this 31st day of May, 1924. W. T. Hutchins, for U S atty. FILED MAY 31 1924 CHAS. N. WILLIAMS, Clerk By R S Zimmerman, Deputy Clerk.

At a stated term, to wit: The January A. D. 1924 Term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday the ninth day of June, in the year of Our Lord one thousand nine hundred and twenty-four.

Present:

The Honorable Paul J. McCormick, District Judge.

United States of America,	} No. 1672-M. Civ.
Plaintiff,	
vs.	}
John G. Moran; Joseph Bruno &	
W. E. Smith Defendants.	

This cause coming before the court at this time for hearing on demurrer; J. E. Simpson, Esq., Assistant United States Attorney, appearing as counsel for the Government, it is by the court ordered that this matter be submitted on briefs; said briefs to be filed 10 x 5 x 5 days.

At a stated term, to wit: The July A. D. 1924 Term, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday the thirteenth day of October, in the year of Our Lord one thousand nine hundred and twenty-four.

Present: The Honorable Paul J. McCormick, District Judge.

United States of America,	}	No. 1672 Civ.
Plaintiff,		
vs.		
Joseph Bruno, John G. Moran and W. E. Smith,		
Defendants.		

The demurrer of the defendant John G. Moran is overruled and defendant is hereby given ten days within which to answer herein.

(TITLE OF COURT AND CAUSE)

ANSWER

of

JOHN G. MORAN.

I.

John G. Moran answering the complaint of the plaintiff herein denies each and every allegation in said complaint.

II.

The defendant further answering plaintiff's complaint alleges that the Court has no jurisdiction of said supposed cause of action set forth in the complaint for the reason that the purported bond upon which the action is predicated was not filed with the Clerk of this Court on the 13th. day of November, 1923, the date which it is alleged the bond was forfeited.

III.

The defendant, John G. Moran, further answering the complaint alleges that the Court is without jurisdiction of said supposed cause of action for the reason that the purported bond upon which the action is predicated is without legal efficacy. In this, that the bond does not set out briefly or at all the nature of the offenses or crime purported to be charged.

IV.

The defendant, John G. Moran, further answering the complaint alleges that the Court has no jurisdiction to try said cause for the reason that the purported bail bond upon which the action is predicated was not by the Commissioner on the 13th. day of November, 1923, or any other date, or ever, or at all, declared forfeited in manner and form as required by law, and that said bond is not now and never has been forfeited.

V.

The defendant, John G. Moran, further answering plaintiff's complaint, and for a separate and distinct cause of action, defendant denies, alleges and admits as follows, to-wit: Admits that the defendant, Joseph

Bruno, was arrested on the 5th. day of July, 1923 in the City of Los Angeles, State of California. Admits that the defendant, Joseph Bruno was brought before Stephen G. Long, United States Commissioner in and for the Southern District of California on some criminal charge. Admits that the defendant, Joseph Bruno, was admitted to bail in the sum of TEN THOUSAND DOLLARS (\$10,000) pending his examination on the said charge. Defendant admits that he signed the purported bail bond which is annexed to plaintiff's complaint, marked "Exhibit A". Admits that Joseph Bruno was released from the custody of the United States Marshall. Defendant alleges the fact to be: That Joseph Bruno was arraigned on the complaint filed in said action. That his examination on said complaint was set for hearing on July 31, 1923. Defendant Moran alleges the fact to be: That Joseph Bruno on the said 31st. day of July, 1923, was in Court at the hour set for his examination, and ready for his trial. That said cause was continued until September the 4th., 1923. Defendant Moran further alleges the fact to be: That Joseph Bruno on said September 4, 1923 was in Court at the hour set for his trial, and ready to proceed with the examination of said cause. That said cause was continued without the knowledge and consent of the defendant and surities to September 20, 1923. That on the 20th. day of September, 1923 the defendant was in Court at the hour set for his trial, and was ready to proceed with the examination of said cause. That over the objection of the said surities, the defendants, Moran and Smith, the said



cause was continued to September 27, 1923. That on the 27th. day of September, 1923 as defendant Moran is informed and believes, and therefore alleges the fact to be: The defendant, Bruno, went to the Court room of the United States Commissioner in the Federal Building at Los Angeles, California at the hour and time set for his trial. That the United States Commissioner was not present to hear said cause, nor was any member of the United States District Attorney's office present to proceed with the prosecution of said cause. That said cause was not called for hearing on said day at the time set for the hearing, nor was said cause called for hearing on said day at all. Defendant Moran, further on information and belief, alleges the fact to be: That said Court room was being used by some person other than Stephen G. Long, the said United States Commissioner, for purpose other than the business of said United States Commissioner. The defendant, Moran, has been informed and believes and therefore alleges the fact to be: That thereafter the defendant, Joseph Bruno, was not notified by the United States Commissioner, or any other officers, or agents of the plaintiff herein, to appear before said United States Commissioner for his trial on said cause on the said 13th. day of November, 1923. And that the said Joseph Bruno had no knowledge or information that his trial before the United States Commissioner was set for November 13, 1923.

## VI.

The defendant, John G. Moran, further answering the complaint on file herein, denies that Joseph Bruno

was by the United States of America, or its officers, or agents, or any other person or persons notified that his trial on said cause was set for November 13, 1923.

## VII.

Defendant, John G. Moran, further answering paragraph five of plaintiff's complaint, denies that the defendant, John G. Moran and W. E. Smith, had notice from the United States of America, or any of its officers, or agents, or any person or persons whatsoever, or at all, that the said cause was set for hearing on the 13th. day of November, 1923.

## VIII.

Defendant Moran further answering complaint on file herein, denies that the said United States Commissioner did on the said 13th. day of November, 1923 call upon the defendant, John G. Moran and W. E. Smith, to produce said Joseph Bruno in Court prior to the forfeiting of the said bail.

## IX.

Defendant, for a further, and separate, and distinct cause of defense, denies and admits and alleges as follows, to-wit: Admits the execution of the purported bail bond set out in plaintiff's complaint, and alleges the fact to be: That the defendant, Joseph Bruno, was at all times, from and after July 31, 1923 up to and including September 27, 1923, ready and willing to proceed with his examination on the charge set out in this action, and that he was all of the said time within the jurisdiction of the said United States Commissioner.

The defendant, John G. Moran further alleges that he has been informed and believes, and upon such information and belief alleges the fact to be: The defendant, Joseph Bruno, was on the 27th. day of September, 1923, at the hour and time set for his examination on said cause, in the Court room of the said United States Commissioner ready for his examination and trial on the said cause. That said cause was again continued at the request of the United States of America.

That subsequent to the said 27th. day of September, 1923, the exact date to defendant Moran being unknown, the said Joseph Bruno was, with the full knowledge and consent of the plaintiff herein, its officers and agents, confined by the State of California in a lunatic asylum in the County of San Bernardino, State of California, which said lunatic asylum is known and designated as The Southern California State Hospital for the Insane.

That said Bruno had been thither carried and there confined under medical treatment for the cure of his malady by the officers and agents of the State of California, with the full knowledge and consent of Stephen G. Long, the said United States Commissioner, and with the full knowledge and consent of the plaintiff herein. And that as affiant is informed and believes, and therefore alleges the fact to be: The said Joseph Bruno was so confined in said asylum on the said 13th. day of November, 1923. Defendant, John Moran, further alleges the fact to be: That said Bruno was

by law and by the rules and regulations of said asylum imprisoned beyond the control of the defendants.

That the defendant, Moran, alleges the fact to be: That prior to November 13, 1923 the defendant, Moran, demanded of the United States Marshall of the Southern District of Southern California, and other agents and officers of the plaintiff herein, to go with him to the said asylum and take the said Bruno and bring him before the said United States Commissioner. That the defendant offered to furnish an automobile and pay the expenses of the said officers if they would go with him to the said asylum and take possession of the body of the said Bruno. That the said United States Marshall refused so to do.

That subsequent to the 13th. day of November, 1923 as affiant is informed and believes, and therefore alleges the fact to be: The said Joseph Bruno escaped from said institution, and so defendant John G. Moran, says that he is not responsible upon or for the forfeiting of said bail bond.

For a separate and distinct cause of defense, defendant Moran denies, alleges and admits as follows, to-wit: Denies that the defendant, John G. Moran and W. E. Smith or either of them was on the 13th. day of November, 1923, or any other time prior thereto called upon by the United States Commissioner to produce the body of the defendant, Joseph Bruno in Court on the said 13th. day of November, 1923.

WHEREFORE, the defendant, John G. Moran prays judgment:

(1) That the plaintiff take nothing by this action, and that he be dismissed with his costs.

(2) And for such other and further relief as to the Court may seem proper in the premises.

Fred H. Thompson,

Attorney for the Defendant, John G. Moran.

[Endorsed]: Received copy of the within Answer the 23rd day of Oct. 1924. Joseph C. Burke, U. S. Atty., Russell Graham, Asst., J. E. Simpson Asst. FILED OCT 23 1924 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk.

At a stated term, to wit: The January A. D. 1925 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Tuesday the seventeenth day of February, in the year of Our Lord one thousand nine hundred and twenty-five.

Present: The Honorable Paul J. McCormick, District Judge.

United States of America,	}	No. 1672-M. Civ.
Plaintiff,		
vs.		
Joseph Bruno, et al.,	}	
Defendants.		

This cause coming before the court for trial; J. E. Simpson, Esq., Assistant United States Attorney, appearing as counsel for the Government; and there being no appearance for the defendants, it is ordered

by the court that the plaintiff put on its proof, and Stephen G. Long having been called and sworn and having testified in behalf of the Government, it is by the court ordered that the plaintiff have judgment as prayed for, and that the plaintiff prepare findings.

(TITLE OF COURT AND CAUSE)

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW.

This cause came on regularly to be heard upon the 17th day of February, 1925 after having been regularly [P J M. J]

set for trial on the said date on the calling of the January term trial calendar, and the plaintiff having been represented in court by J. E. Simpson, Assistant United States Attorney, and the defendant John G. Moran, not being present in court, either in person or by counsel, and evidence having been introduced on behalf of the plaintiff in support of the allegations contained in its complaint, and no evidence having been introduced by the defendant, and the court having directed that the findings and judgment be in favor of the plaintiff,

NOW, THEREFORE, after due deliberation, the court finds the following facts:

I.

That each and all of the allegations contained in the complaint filed by the plaintiff herein are true;

II.

That it is not true, as alleged in the defendant's answer, that the defendant Joseph Bruno and the de-

defendants John G. Moran and W. E. Smith were not notified that the cause was set for trial by the United States Commissioner on November 13th, 1923; but the court finds that on July 6, 1923, upon the arraignment of the defendant Joseph Bruno, and the execution of the bond by these defendants, the *the* court, in the presence of the defendants continued the preliminary of the defendant Joseph Bruno until July 31st, which said continuance was with the express consent of the defendants; That upon July 31st, the hearing was, in the presence of the defendant continued to September 4th at the request of the plaintiff and defendant Joseph Bruno; that on September 4th, 1923, the cause was continued with the consent of both parties and set for hearing on September 20th, 1923; that on September 20th, 1923 the cause was in like manner continued to September 27th, 1923; that on September 27th, the cause was in like manner continued until October 11th, 1923; that on October 11th, 1923, the cause was continued to October 22nd, 1923 for hearing, at the request of the bondsmen John G. Moran and W. E. Smith, upon the statement by them that the defendant Joseph Bruno was ill in a hospital; that on October 22, 1923, the cause was continued for hearing to October 29th, 1923, at the request of Arthur Chapman, attorney for the defendant; that on October 29th, 1923, the cause was continued one week, the attorney for the defendant being present, but the defendant Joseph Bruno being absent; that thereafter the cause was in like manner continued until November 13th, 1923, at which said time the defendant Joseph

Bruno was called by the Marshal and the defendants John G. Moran and W. E. Smith were by the Marshal called to produce the body of the said Joseph Bruno; that the defendants failed to appear and it was by the Commissioner ordered that his bond be forfeited.

### CONCLUSIONS OF LAW.

From the foregoing facts, the court legally concludes:

1. That the plaintiff United States of America is entitled to a judgment against the defendant John G. Moran in the sum of Ten Thousand Dollars (\$10,000.00), and to its costs of suit incurred or expended herein, and to have execution issued therefor;

2. That a judgment be entered accordingly.

Dated, February 19th, 1925.

Paul J. McCormick,

United States District Judge.

[Endorsed]: Filed February 19, 1925 Chas. N. Williams, Clerk By Louis J. Somers, Deputy.

(TITLE OF COURT AND CAUSE)

### J U D G M E N T .

On the 17th. day of February, A. D., 1925, being a day in the January, 1925 Term of the above-entitled Court, this cause came on for trial; J. E. Simpson, Esq. Assistant U. S. Attorney, appearing as counsel for the Government; and there being no appearance for the defendants, and the Court having ordered that plaintiff adduce its proof, and evidence on behalf of



the Government having thereupon been adduced, and the Court having ordered that the Plaintiff have judgment as prayed for in the Complaint, and that the Plaintiff prepare Findings; and thereafter, on February 19th., 1925, Findings of Fact and Conclusions of Law were filed herein, wherein the Court finds for the Plaintiff, and the United States of America in the sum of \$10,000.00, and against the defendant John G. Moran, and for its costs incurred herein, and that execution issue therefor, and that judgment accordingly enter;

NOW, THEREFORE, by virtue of the law and by reason of the premises aforesaid, it is considered by the court that the Plaintiff, the United States of America, do have and recover of and from the defendant, John G. Moran the sum of Ten Thousand (10,000.00) Dollars, together with costs incurred herein and that execution issue therefor.

JUDGMENT ENTERED MARCH 9th., 1925

CHAS. N. WILLIAMS, Clerk

By Murray E. Wire

Deputy Clerk.

[Endorsed]: FILED MAR 9 1925 CHAS. N. WILLIAMS, Clerk By Murray E. Wire, Deputy

(TITLE OF COURT AND CAUSE)

### Assignment of Error

And now comes the plaintiff in error by his attorney, and in connection with his petition for a writ of error says that in the record, proceedings and in the final

judgment aforesaid manifest error has intervened to the prejudice of the plaintiff in error, to-wit:

1. The Court erred in not sustaining the demurrer of the plaintiff in error and the defendant below to the complaint.

2. The Court erred in holding good in law the bail bond upon which the action is predicated.

3. The judgment of the Court is by the reason thereof contrary to law, by reason whereof plaintiff in error prays that the judgment aforesaid may be reversed etc.

Fred H. Thompson

Attorney for Plaintiff in Error

[Endorsed]: FILED JUN 5 1925 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk.

(TITLE OF COURT AND CAUSE)

Petition for Writ of Error

To the Honorable Paul J. McCormick

Judge of said court.

And now comes John G. Moran, defendant in the above entitled action, and for himself, and not for his co-defendants, by and through his attorney Fred H. Thompson, and feeling himself aggrieved by the final judgment of this court entered against him in favor of the United States of America, the Plaintiff herein on the 9th day of March 1925 hereby prays that a Writ of Error may be allowed to him from the United States Circuit Court of Appeals for the Ninth Circuit

to the District Court of the United States in and for the Southern District of California, Southern Division, and in connection with this petition, petitioner herewith presents his Assignment of Error.

Fred H. Thompson

Attorney for Plaintiff in Error

[Endorsed]: FILED JUN 5 1925 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk.

(TITLE OF COURT AND CAUSE)

Order Allowing a Writ of Error and Fixing Bond for Costs.

Let a Writ of Error issue from the United States Circuit Court of Appeals for the Ninth Circuit to the United States District Court for the Southern District of California, Southern Division, as prayed for in the petition of the said John G. Moran, and let a Citation be issued to the defendant in error.

It is further ordered that an appeal bond for costs be fixed in the sum of \$300/00

Paul J. McCormick

Judge.

[Endorsed]: FILED JUN 5 1925 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk.

## (TITLE OF COURT AND CAUSE)

## BOND

KNOW ALL MEN BY THESE PRESENTS: That we, John G. Moran, Principal and E. W. Pascoe, and A. A. Byrens, sureties, are held and firmly bound unto the United States of America in the full and just sum of Three Hundred (\$300.00) Dollars, to be paid the United States of America, to which payment well and truly made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

WHEREAS lately at a term of the District Court of the United States in and for the Southern District of California, Southern Division, in a suit pending in said Court between the United States of America, plaintiff vs. John G. Moran, et al, defendants, and

WHEREAS, a judgment by said Court on the 7th day of March, 1925, was rendered against the said defendants John G. Moran et al, and the said defendant, John G. Moran, having obtained a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit in the aforesaid suit;

NOW, the condition of the above application is such that the said John G. Moran shall prosecute his Appeal to effect and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void; else to remain in full force and effect.

Sealed with our seal and dated this 8th day of June, in the year of our Lord, 1925.

John G. Moran  
Principal

E. W. Pascoe

A. A. Byrens

Sureties.

State of California            )  
   ) ( SS.  
 County of Los Angeles        )

E. W. PASCOE, being first duly sworn, deposes and says; that his occupation is investments, and that he is a resident of the City of Los Angeles, County of Los Angeles, State of California, and that he is worth the sum of Three Hundred (\$300.00) Dollars over and above his just debts and liabilities exclusive of property exempt from execution, and that he is a property holder within the County of Los Angeles, State of California.

E. W. Pascoe

SUBSCRIBED AND SWORN to before  
 me this 8th day of June, 1925.

Esther Hattenbach

Notary Public in and for the County of  
 Los Angeles State of California

(SEAL)

STATE OF CALIFORNIA        )  
   ) SS.  
 County of Los Angeles        )

A. A. Byrens, being first duly sworn, deposes and says: that his occupation is investments and that he is a resident of the City of Los Angeles, County of Los Angeles, State of California; and that he is worth the sum of Three Hundred (\$300) Dollars over and above

his just debts and liabilities exclusive of property exempt from execution; and that he is a property holder within the County of Los Angeles, State of California.

A. A. Byrens

Subscribed and sworn to before me this  
8th day of June, 1925.

Anna May Kelly

Notary Public in and for the County of  
Los Angeles, State of California

My Com. expires Oct. 15, 1927.

(SEAL)

I hereby certify that I am personally acquainted with the above named sureties and believe them to be worth the sum of Three Hundred (\$300.00) Dollars as set forth, and I hereby recommend to the Court the approval of the said Bond.

Fred H. Thompson

Attorney for Defendant.

Approved this 10th day of June, 1925.

McCormick

Judge.

[Endorsed]: FILED JUN 9 1925 CHAS. N.  
WILLIAMS, Clerk By R S Zimmerman Deputy  
Clerk.

(TITLE OF COURT AND CAUSE)

PRAECIPE

TO THE CLERK OF SAID COURT:

Sir:

Please issue certified transcript on writ of error to the Circuit Court of Appeals for the Ninth Circuit to include copy of the complaint, demurrer, court minutes of June 9th, 1924, and October 13th, 1924, answer of defendant, minute order of February 17 1925, findings of fact and judgment, assignment of error, petition for writ of error, order allowing writ of error, bond on writ of error, citation and writ of error, omitting captions and endorsements with the exception of filing marks.

Attorney for defendant

Fred H. Thompson.

[Endorsed]: FILED JUN 9 1925 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED  
STATES, SOUTHERN DISTRICT OF  
CALIFORNIA, SOUTHERN  
DIVISION.

United States of America,	)	
Plaintiff,	)	
	)	CLERK'S
vs.	)	
	)	CERTIFICATE.
Joseph Bruno, <i>et al.</i> ,	)	
Defendants.	)	

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 31 pages, numbered from 1 to 31 inclusive, to be the Transcript of Record on Writ of Error in the above entitled cause, as printed by the plaintiff-in-error, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation, writ of error, complaint, demurrer, minutes of June 9, 1924, order overruling demurrer, answer, minute order of February 17th, 1925, findings of fact and conclusions of law, judgment, assignment of errors, petition for writ of error, order allowing writ of error and fixing bond for costs, bond, and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Writ of Error amount to and that said amount has been paid me by the plaintiff-in error herein.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this            day of June, in the year of our Lord One Thousand Nine Hundred and Twenty-five, and of our Independence the One Hundred and Forty-ninth.

CHAS. N. WILLIAMS,  
Clerk of the District Court of the  
United States of America, in and  
for the Southern District of Cali-  
fornia.

By

Deputy.

